

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No 35063

219 897

MICHIGAN CENTRAL RY, LLC-  
ACQUISITION AND OPERATION EXEMPTION-  
LINES OF NORFOLK SOUTHERN RY. CO

**RESPONSE OF BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION/IBT AND BROTHERHOOD OF RAILROAD SIGNALMEN  
TO PETITION FOR REVOCATION OF CLASS EXEMPTION  
AND TO PROPOSED PROCEDURAL SCHEDULE**

The Brotherhood of Maintenance of Way Employees Division/IBT ("BMWED") and Brotherhood of Railroad Signalmen ("BRS"), the unions that represent maintenance of way employees and signalmen employed on the rail lines that are the subject of this Finance Docket, agree that the class exemption invoked by Michigan Central Railway LLC with respect to its proposed acquisition of rail lines owned and operated by Norfolk Souther Ry. ("NSR") should be revoked to allow affected persons and entities to learn the facts about the proposed transaction and the related transactions so they can effectively comment on the planned transactions, and to allow the Board to make a considered and reasoned decision concerning these arrangements. BRS and BMWED also submit that the time periods for comments and decision proposed by Michigan Central, NSR and WATCO are too short for there to be a meaningful STB proceeding. BMWED and BRS do not take a position at this time on suggestions of other interested persons and entities that the alleged transaction should be handled under the application process. But the unions submit that if the Board is amenable to the sort of procedural schedule proposed by Michigan Central, NSR and WATCO, the period for comments should be extended to at least 60 days, the period for replies should be extended to 20 days and the time for STB review and

decision should be extended to at least 40 days.

While BMWED and BRS agree that the class exemption should be revoked, the unions believe that this is a unique and troubling transaction, and that there may not be a legitimate transaction here at all. It has been asserted by Michigan Central (petition at 6) that the potential concerns of others are simply based on incomplete or inaccurate information. But mere skimming of the redacted documents already filed by Michigan Central, WATCO and NSR reveals a number of substantial questions about this transaction. While presented as a simple Section 10901 so-called non-carrier acquisition, it appears that this is not such a transaction. Among other things, NSR itself, the putative vendor, is a partner in the acquiring entity. While the parties blithely assert that NSR will have a non-controlling interest based on percentages of ownership of Michigan Central, various aspects of the agreements already produced show that NSR will control various major decisions, and control maintenance of the right of way, maintenance of the track and signal systems and control interchange. BMWED and BRS are unaware of any prior transaction under Section 10901 that looks remotely like the arrangement concocted by NSR and WATCO. Indeed, it appears that NSR will effectively control Michigan Central and that this is not a real acquisition at all. And the proffered rationale for this arrangement—that the structure of the transaction will allow for capital investment in the subject lines without heavy debt for Michigan Central, and will allow for capital investment targeted where it is most needed (petition at 5) makes no sense on its face, and will certainly have to be explained. (Is NSR somehow impeded in making investments in its own lines? Is NSR somehow unable to invest capital where it is most needed?) There are also questions about the associated control and trackage rights transactions and how they relate to the purported acquisition. Additionally, BRS and BMWED have concerns about this transaction under various national rail transportation policies and they

assume that other interested persons and entities will also have concerns under the national rail transportation policies. Thus, regardless of the reasons stated in the petition for revocation, the Board most certainly should revoke the class exemption to allow interested persons and entities to investigate and effectively comment upon these transactions

BRS and BMWED further submit that given the concerns discussed above, the procedural schedule proposed by Michigan Central is too short and should be extended. It is unreasonable for persons who have just come to learn of these transactions to become familiar with them, investigate them and prepare responsive comments a mere 30 from a Federal Register notice and just 50 days after Michigan Central/NSR/WATCO filings first became public. The proposed comment period is especially unreasonable because all of the investigation and preparation of comments would have to occur when many people are likely to be away for substantial portions of the month of August. BMWED and BRS also submit that the proposed schedule does not allow the Board adequate time to review and digest comments about the transactions. Michigan Central/NSR/WATCO presume that they will readily deflect any opposition, so the Board will be able to move quickly to a decision 25 days after replies are filed. But they do recognize that there will be parties with questions and parties with opposing positions. The Board has an obligation to insure that all interested persons and entities have a reasonable opportunity to present their views in a meaningful proceeding. The Board also has an obligation to insure that it has enough time to actually consider the views of all interested persons.

Michigan Central/NSR/WATCO apparently seek an actual decision on an exemption in order to be able to assert some sort of STB imprimatur for the acquisition as an answer to anticipated opposition. But if the Board is to initiate a revocation proceeding with planned

opportunity for comment and Board deliberation it should be a meaningful proceeding, not just the appearance of a meaningful proceeding- just something for Michigan Central/NSR/WATCO to get through before moving ahead with their plans. BMWED and BRS also note that there is no reason for the 90 day schedule proposed by Michigan Central/NSR/WATCO, and they will not be harmed by larger periods of time for comments and Board deliberations. Michigan Central press releases say that they expect to start up in the first quarter of 2008. If that is so, there is no need for a decision by mid-October 2007, and there would be no harm to Michigan Central, NSR and WATCO if a decision is issued at the end of November or beginning of December. BRS and BMWED submit that, at the shortest, the schedule for this case should be as follows:

comments	60 days after revocation of exemption by Federal Register notice
replies	20 days after comments due
decision	40 days after replies are due.

For all of the foregoing reasons BMWED and BRS respectfully submit that the class exemption invoked by Michigan Central should be revoked, and that if the Board decides to initiate the sort of expedited consideration of the petition to revoke the exemption proposed by Michigan Central, NSR and WATCO, the procedural schedule they proposed should be extended, at least as is described above.

Respectfully submitted,

/s/

Richard S. Edelman  
O'Donnell, Schwartz & Anderson  
1900 L Street, N W  
Suite 800  
Washington, D C 20036  
(202) 898-1824

Dated: August 1, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused to be served one copy of the foregoing  
Response of Brotherhood of Maintenance of Way Employees Division/IBT and Brotherhood of  
Railroad Signalmen to Petition for Revocation of Class Exemption and to Proposed Procedural  
Schedule , by first-class mail, postage prepaid, to the offices of the following.

Michael J Whims  
Chairman  
Michigan Association of Railroad  
Passengers  
1014 Iroquois Boulevard  
Royal Oak, MI 48067  
Tel (248) 892-4545  
Fax (248) 546-6534

Harold A Ross  
Acting General Counsel  
Brotherhood of Locomotive Engineers and  
Trainmen, Division of IBT Rail Conference  
1370 Ontario Street, Room 500  
Cleveland, Ohio 44113-1702

Jeffrey O Moreno  
Thompson Hinc LLP  
1920 N Street, NW  
Washington, DC 20036  
(202) 330-8800

Karl Morell  
Ball Janik LLP  
1455 F Street, NW, Suite 225  
Washington, DC 20005

G. Paul Moates  
Jeffrey S. Berlin  
Donald H Smith  
Sidley Austin LLP  
1501 K Street, NW  
Washington, DC 20005

Daniel R. Elliot, III  
Associate General Counsel  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, OH 44107

John V Edwards  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510

William A. Mullins  
Baker & Miller PLLC  
2401 Pennsylvania Avenue, NW  
Suite 300  
Washington, DC 20037

August 1, 2007

/s/

Richard S Edelman